

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 14, 2003, at 6:30 p.m. in Room G55/G59 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Linda Radler, Chairman
James Ward
Robert Bartholomew
Paul Schultz
Mary Voelker

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Town of Merton Board of Adjustment
Barry & Pam Bielawski, BA03:034, petitioners
Angela & Thomas Jens II, BA03:036, petitioners
John O. Pinchard, BA03:033, petitioner
John Nelson, BA03:029, petitioner
Robert & Barbara Russell, BA02:129, petitioners
Ernest Schug, BA03:036, neighbor
John Steiner, BA03:037, petitioner
Dawn & Rick Ray, BA03:035, petitioners
Rod Kilian, builder
Dave & Paulette Draeger, BA03:014, petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I move we approve the Summary of the Meeting of April 9, 2003.*

The motion was seconded by Ms. Voelker and carried unanimously.

NEW BUSINESS:

BA03:028 TERENCE & JENNIFER ZASTROW (Held in abeyance from April 23, 2003.)

The application was withdrawn per the request of the petitioners.

BA03:029 JOHN & MARY NELSON

Mr. Ward

I move we incorporate the staff recommendation with the following modifications to the following conditions: Condition No. 1 be modified to read: The residence and attached garage must not exceed 2,100 sq. ft. in size. The garage must be included in the 2,100 sq. ft. total square footage and must be constructed as part of this approval and may be detached or attached to the residence. The Waukesha County Board of Adjustment prefers the garage to be attached to the residence. Condition No. 3 shall be eliminated. Condition No. 5 shall include: The first floor must not be any higher than 874.4 ft. above mean sea level. Condition No. 7 shall be modified to incorporate the modification in Condition No. 5.

For the following reasons:

The purpose and intent of the Ordinance is to remove non-conforming structures and make the property more conforming. In this particular case, we are removing a residence, which is severally non-conforming because it is so close to the lake and we are also removing a garage with its extension, which is so close to the property line. We are removing two extremely non-conforming structures to replace them, for the most part, a substantially conforming structure as far as setbacks are concerned. The granting of the variance is much more consistent with the Ordinance than the existing status of the property as it is right now.

Mr. Schultz added: They do not have reasonable use of the property because one building is not allowed for human habitation, per the November 6, 1974, Board of Adjustment hearing and the other building doesn't meet the minimum building code for energy, foundation, and structure because of its age of 80 years plus, which does create a hardship.

Mr. Ward added: If you read the word "unique" as referring to one particular piece of property, you will never have a variance. It seems to me that the uniqueness is for a localized area, rather than a parcel because that is the way the topography of the land is and in this particular situation the property is unique enough that the Town and County wouldn't pass a specific zoning ordinance just for this neighborhood. The particular parcel may not be unique, but the area in general is small enough so you wouldn't have a particular zoning ordinance addressing whatever issue happens to be the case and we have that here. When using the hardship and uniqueness test, it is satisfied.

Ms. Voelker added: The DNR stated the proposed project results in adversely impacting aquatic and terrestrial habitat and negatively impacts the natural beauty in the area. I don't understand where they are coming from without any proof with the statements they have made. I don't understand how the increase of the floor area ratio and decrease in open space where any aquatic and terrestrial life in that particular area in the County or road is going to be decreased or affected.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The residence and attached garage must not exceed 1,800 sq. ft. in size. The garage must be included in the 1,800 sq. ft. total square footage and must be constructed as part of this approval and attached to the residence.
- 2.) All existing structures on the property must be removed prior to the construction of the new single-family residence and attached garage. If this is not possible, please contact the Waukesha County Department of Parks and Land Use staff to determine alternative procedures, which the staff will be able to authorize.
- 3.) The first story floor area and garage together must not exceed 1,250 sq. ft.
- 4.) The proposed residence and attached garage must meet the offset, road setback, and shore setback requirements. Any decks and/or patios must meet all setback requirements with the exception of the floodplain setback. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the road, and the lake, as the overhangs exceed two (2) ft. in width.
- 5.) The first floor of the structure shall be placed at or above the flood protection elevation (874.4 ft. above mean sea level). Fill shall be used to elevate the first floor so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope conditions at its terminus which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved, as set forth above, the structures shall be flood proofed to the flood protection elevation, in accordance with the methods set forth herein, and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified as set forth above, which are designed to the flood protection elevation for the particular area in question. All flood proofing measures shall, at a minimum, provide anchorage to resist floatation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the flood proofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.
- 6.) There shall be dry land access to the residential structure, dry land access to be considered contiguous lands outside or above the floodplain elevation where the depth and duration of floodwaters do not adversely affect rescue and relief operations during flood. **Note:** The Wisconsin Administrative Code NR 116.13 (2) (d) indicates that if the existing road does not comply with the dry land access requirement (elevated above the 100-year flood elevation of 872.4 ft. above mean sea level), and compliance with that requirement is impractical, new development and substantial improvements may be permitted only if one of the following

occurs:

- a. The municipality has an adequate natural disaster plan, which has been concurred in by the division of emergency government and approved by the Department of Natural Resources; or
- b. The municipality has written assurance from the appropriate units of police, fire, and emergency services that rescue and relief can be provided by wheeled vehicles to the structures during regional flooding, taking into account the anticipated depth, duration, and velocity of the regional flood event in the area, thereby protecting human life and health and minimizing property damage and economic loss.

Since the elevation of Venice Beach Rd. is below the 100-year flood elevation, it will be required to submit proof of compliance with one of the above-stated requirements, prior to the issuance of a zoning permit.

- 7.) The proposed residence may not have a full basement. If a crawlspace is proposed, it shall be located at or above the floodplain elevation (872.4 ft. above mean sea level).
- 8.) Prior to the issuance of a zoning permit, a stakeout survey showing the location of the residence, attached garage, decking and retaining walls, in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 9.) Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 10.) In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Summit Building Inspector and the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will permit the replacement of two residential structures and an attached garage in the floodplain with a new residence and attached garage, elevated above the floodplain and in compliance with the floodplain district requirements.

The approval of this request, as recommended, will result in a lateral expansion into the floodplain, however, having a new structure which meets the above requirements will minimize the impact of the new residence on the floodplain and the lake, while still permitting a reasonable use of the property. Finally, the approval of this request, as recommended, is not contrary to the public interest and will result in the removal of two severely non-conforming structures. The removal of the two severely non-conforming structures will improve the public health, safety and welfare of the petitioners and the property owners in the surrounding area. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:033 JOHN O. PINCHARD

Mr. Ward

I move we approve the petitioner's request, with the following conditions:

- 1. The north and south walls of the addition shall not extend any further than the existing garage.*
- 2. The existing garage shall be re-sided so the entire garage matches.*
- 3. Prior to the issuance of a zoning permit, a stakeout survey showing the location of the garage addition, as well as all existing structures and their appurtenances, in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
- 4. The dimensions shall not exceed 10 ft. x. 25 ft. and shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines and the road, as the overhangs exceed two (2) ft. in width.*
- 5. The garage addition shall not be constructed any higher than the existing garage on the property.*

For the following reasons:

The lot is strange looking and a great portion of his lot is shared with a common access for three other neighbors. He doesn't have a basement. He has a small house and the extension is no closer than the required lot line or the road than the existing garage. There is no upstairs in the proposed garage.

The motion was seconded by Mr. Schultz. There were 4 yes votes. Ms. Voelker voted against the motion.

The staff's recommendation was for denial for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. The existing garage could be remodeled significantly without the benefit of a variance. Non-structural repairs, such as siding, shingles, replacement windows, and doors do not require permits and are considered ordinary maintenance. In addition, structural repairs

could be completed to the existing structure, as long as the repairs do not exceed 50% of the fair market value of the structure. There are similar sized detached garages on the adjacent properties as the existing detached garage; however, the detached garages on the neighboring properties do not exceed the size of the existing garage on the subject property to the degree proposed as part of this application. Our Department agrees a garage for storage is necessary on the property; however, 576 sq. ft. (24 ft. x 24 ft.) is a reasonably sized structure on a lot of this size. The existing garage could remain in its current location, with minor repairs, or it could be demolished and a new detached garage could be constructed in a conforming location. Allowing the petitioner to exceed the existing garage size would not be appropriate for the property, since the addition would intensify and enlarge the structure beyond what is typical of structures on nearby lots. The surrounding area is highly developed and encouraging increased development beyond the requirements of the Ordinance would decrease the aesthetic value of the surrounding area and, eventually, adversely impact the natural resources in the area by adding impervious surfaces.

BA03:034 BARRY BIELAWSKI

Ms. Voelker

I make a motion to adopt the staff's recommendation for approval with the following modification to Condition No. 3 of the staff report: The detached garage shall be located no closer to the established road right-of-way of Wisconsin Avenue than a setback of 9.3 ft., for the reasons stated in the Staff Report, including that Nancy Payne, Water Supply Private Specialist, Department of Natural Resources, has sited a new well site on the property, which would meet the offset requirements for the establishment of a new accessory building from the new well site.

Ms. Radler added the following reason: This will also create more open space from the side and keep it further from the lot line.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The detached garage shall be no larger than the detached garage approved in the 1970 variance (24 ft. x 24 ft., 576 sq. ft).
- 2.) The detached garage must be located at least 5.3 ft. from the east and west lot lines. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the garage must be located the additional distance from the side lot lines, as the overhangs exceed two (2) ft. in width.
- 3.) The detached garage shall be located no closer to the established road right-of-way of Wisconsin Avenue than the existing structure, a setback of 13.3 ft.
- 4.) Prior to the issuance of a zoning permit, a stakeout survey showing the location of the detached garage, and all other structures on the property, in compliance with the

aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

- 5.) Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 6.) If any changes are made to the existing grade, the petitioner must submit a grading and drainage plan to ensure the construction of the detached garage does not result in adverse drainage onto adjacent properties. The detailed grading and drainage plan must show existing and proposed grades and must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed garage replacement, with the above conditions, allows the petitioner to continue using his property as he does today. The petitioner has already received past variances to have a structure of its proposed size and, with another variance received on the property, the petitioner has established reasonable use with the variances already granted. Therefore, it is necessary to reduce the proposed size of the garage to the size already approved in 1970, when reasonable use was established for the property. The existing garage is currently in line with the detached garage to the west. The attached garage to the east is closer to the road than the proposed location of the garage. Therefore, it is reasonable to allow the road setback variance, but not encroaching on the road setback any further than the existing garage. The new garage would be more conforming than the existing garage. The approved proposal, with the above conditions, would allow the petitioner reasonable use of his property, while maintaining the purpose and intent of the Ordinance.

BA03:035 RICHARD & DAWN RAY

Mr. Ward

I make a motion to approve the request subject to the modifications and conditions as stated by staff in the staff recommendation with the following additional changes:

Condition No. 1 would change to allow the garage and porch in its proposed location. (Calculations were completed by staff after the meeting to reflect the true road right-of-way)

Condition No. 2 shall be changed to read: The total floor area on the property shall not exceed 2,100 sq. ft., (25%) not including the basement. *The floor area must include a garage and it must be attached as proposed. 20 sq. ft. on the*

first and second floors of the porch shall not be included in total floor area for the property and shall be considered covered stoops.

Condition No. 4 shall be revised as follows: Any proposed (*new*) retaining walls must be located greater than 75 ft. from the shoreline of Lake Keesus. If any *new* retaining walls are proposed within 5 ft. of the lot line, the Town of Merton and the Waukesha County Plan Commission's must approve them, prior to construction.

Condition No. 6 shall be omitted since the deck has been there for more than 20 years.

Condition No. 7 shall include that any new improvements, the house, deck, stairways off the deck, need to be at least 75 ft. from the lake and the 100-year floodplain.

There shall be an additional condition (Condition No. 10) stating that the existing concrete pad on the opposite side of the lot versus the garage must be removed.

For the following reasons:

The report provides that the residence is non-conforming because it does not meet the minimum floor area required for a single-family residence. The purpose of the Ordinance is to provide adequate living space in structures for Waukesha County residents as a reasonable use. The house has to be increased in size to fit the Ordinance and the Board is expanding it to a reasonable size, certainly not more than what is necessary using today's standards, 2,100 sq. ft. The property is unique because the residence is located on the top of a ridge and it also does not meet the minimum housing standards of Waukesha County, so it has to be upgraded. The house is not being remodeled to be any closer to the lake than it is right now.

Ms. Voelker and Mr. Schultz added: The increase in the amount of impervious surface to approximately 27% of the property, per the DNR, is a miscalculation since the petitioners are willing and conditioned to remove the impervious surface on the east side of the property, which makes up for most of the addition of the garage.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The residence and attached garage must not be located any closer to the established road right-of-way than the existing residence, 13.7 ft. from the established road right-of-way.
- 2.) The total floor area on the property shall not exceed 1,800 sq. ft (21.5%), not including the basement.
- 3.) The attached garage shall be located no closer than 5 ft. from the southwest lot line. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the garage must be located the additional distance from the side lot line, as the overhangs exceed two (2) ft. in

- 4.) Any proposed retaining walls must be located greater than 75 ft. from the shoreline of Lake Keesus. If any retaining walls are proposed within 5 ft. of the lot line, the Town of Merton and the Waukesha County Plan Commission's must approve them, prior to construction.
- 5.) The 53 sq. ft. shed must be removed from the property, prior to construction.
- 6.) The deck detached from the residence between the residence and the lake must be removed, prior to the issuance of any permits.
- 7.) The proposed deck must be located at least 6 ft. from the north and south lot lines.
- 8.) Prior to the issuance of a zoning permit, a stakeout survey showing the location of the residence, attached garage, decking and retaining walls, in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 9.) Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 10.) If any changes are made to the existing grade, the petitioner must submit a grading and drainage plan to ensure the construction of the attached garage and any possible retaining walls does not result in adverse drainage onto adjacent properties. The detailed grading and drainage plan must show existing and proposed grades and must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, the petitioner will enjoy a reasonable use of the property in the form of additional living area and an attached garage and deck with the intent to eliminate any potential

adverse affects on adjoining properties and the natural resources in the area. Due to the extremely non-conforming size of the lot, a variance is required from the floor area ratio and open space to allow any reasonably sized residence with a garage. As conditioned, the approval allows the petitioner minimal amount of relief from the Ordinance requirements to allow reasonable use of the property. The approved garage addition still conforms to the general desirability of the neighborhood and allows the petitioner's to store vehicles and other materials within an enclosed structure, rather than outside where it may be considered a nuisance to the neighbors. The proposal, as conditioned, allows the petitioner reasonable use of their property with the minimal amount of

relief to the required provisions of the Ordinance, while removing an extremely non-conforming deck near the lake. Therefore, the proposal as conditioned, is entirely within the purpose and intent of the Ordinance.

BA03:036 TOM JENS II

Mr. Bartholomew

I make a motion to adopt the staff's recommendation for partial approval of this request, with the conditions stated in the Staff Report and for the reasons as stated in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for **approval** of the request for a special exception from the offset provisions to remodel the residence and **denial** of the request for a special exception from the accessory building floor area ratio requirements, with the following modifications and conditions:

- 1.) The detached garage shall not exceed 962 sq. ft., 3.9% floor area ratio. The detached garage must meet the offset, shore and floodplain setback, and road setback requirements. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the road, and the lake and floodplain, as the overhangs exceed two (2) ft. in width.
- 2.) The detached garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured half way between the peak of the roof and the eaves, must not exceed 15 ft.
- 3.) There shall be no other detached structures permitted on the property, unless Ordinance requirements are changed to allow additional detached structures on this property in compliance with the Ordinance requirements.
- 4.) The addition to the residence must not be located any closer than 5 ft. from the west lot line. The dimensions shall be measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot line, as the overhangs exceed two (2) ft. in width.
- 5.) The 64 sq. ft. shed must be removed, prior to the issuance of any permits. If the vehicle on the subject property is unlicensed or inoperable, it shall be removed from the property or entirely enclosed within a structure, prior to the issuance of any permits.
- 6.) Prior to the issuance of a zoning permit, a stakeout survey showing the location of the residence and proposed addition, detached garage, and any other appurtenances, in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

- 7.) Prior to the issuance of a zoning permit, a complete set of building plans for the residence and garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 8.) If any changes are made to the existing grade, the petitioner must submit a grading and drainage plan to ensure the construction of the detached garage and addition does not result in adverse drainage onto adjacent properties. The detailed grading and drainage plan must show existing and proposed grades and must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The remodeling and additions to the residence only require a special exception from the offset requirements and, since the property and the surrounding properties in the area are very narrow, it is difficult to meet the offset requirements. The addition would not further impact the surrounding area or natural resources in the area, but would allow the petitioner a greater use of his property. The detached garage, however, should meet the 3.9% accessory building floor area ratio provision, since the existing garage on the property is already one of the largest detached structures in the nearby area and is still much smaller than the proposed structure. 962 sq. ft. is a reasonable sized garage for vehicles and storage and would fit the size of the property and the structures on the neighboring properties. The approved proposal, with the above conditions, would allow the petitioner reasonable use of his property, while maintaining the purpose and intent of the Ordinance.

BA03:037 JOHN STEINER

Ms. Radler

I move to approve the staff's recommendation for approval, with the following modifications to the conditions and reasons in the staff recommendation:

Condition No. 1 shall be revised to read the following: *The 1,349.24 sq. ft. office area, the 437.19 sq. ft. storage area,*

437.19 sq. ft. exposed lower level on the lakeside and west side of the property, and the 198 sq. ft. extension on the east side of the exposed lower level tavern shall be removed prior to the issuance of any permits. This will reduce the floor area ratio to approximately 54% and increase the open space to 7,336.84 sq. ft., with the exception of the proposed entryway.

Condition No. 2 shall be omitted.

Condition No. 7: *Remove decking and retaining walls from the paragraph.*

Add Condition No. 10: *The entryway, porch, and stairways*

must receive staff approval. Any questions by staff can be brought back to the Board of Adjustment for review. The structures shall be permitted, but only the minimal area necessary for an entryway and stairways to be constructed to code.

For the following reasons:

As recommended, the structure would still be a non-conforming structure, however, the petitioner is reducing the floor area ratio from 68% to 54%. He is removing extremely non-conforming parts that are closer to the lake and to the road and will then enjoy a reasonable use of the property.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) Along with the 1,349.24 sq. ft. office area, the 437.19 sq. ft. storage area, the 437.19 sq. ft. exposed lower level on the lakeside and west side of the property, the 198 sq. ft. extension on the east side of the exposed lower level tavern, and the residential structure having 2,420.92 sq. ft, shall be removed prior to the issuance of any permits. This will reduce the floor area ratio to less than 50% and would increase the offset to approximately 30 ft. on the west lot line and increase the open space to 8,547.3 sq. ft, with the exception of the proposed entryway.
- 2.) The additional area of converted restaurant, which was to be located in the severely non-conforming residential part of the existing structure, could be reconstructed over the area of the existing tavern located east of the existing residential and office structures on top of the tavern. The addition shall be located at least 10 ft. from the residence to the east and the residence directly south of the existing tavern and must be located at least 7 ft. from the east and south property lines, not abutting the road. An entryway could be constructed where proposed, but shall not result in exceeding the 50% floor area ratio requirement and it must meet the offset (7 ft.) and road setback (35 ft.) requirements. The open space must not be reduced to lower than 8,000 sq. ft. If stairways are required for code compliance, they can be constructed, but must be located in the most conforming location possible.
- 3.) The attic space above the restaurant addition must not be greater than 6 ft. measured from the floor of the attic to the highest point in the ceiling or roofline. The attic must be accessed by a pull-down staircase and must be used for storage only.
- 4.) A detailed Site Plan and Plan of Operation recognizing the above conditions shall be prepared and submitted for review and approval by the Town of Oconomowoc Planning Commission, the Town of Oconomowoc Building Inspector, the Waukesha County Park and Planning Commission and the Waukesha County Department of Health, prior to the issuance of a zoning permit.
- 5.) The Waukesha County Park and Planning Commission and the Waukesha County

Department of Transportation must approve the parking on the opposite side of Wisconsin Avenue to accommodate parking for the proposed restaurant, prior to the issuance of a zoning permit.

- 6.) A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit and must include all repairs and remodeling required in order for the entire building to be in building code compliance.
- 7.) Prior to the issuance of a zoning permit, a new survey showing the location of the existing and proposed structure, decking and retaining walls, in compliance with the aforementioned conditions, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval to determine compliance with the conditions stated herein.
- 8.) Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval and shall receive State Department of Commerce approval.
- 9.) If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As recommended, it is felt by the staff that although the existing building and its addition would still be considered a non-conforming structure by virtue of its proximity to the lake, 100-year floodplain,

east offset and open space, the removal of significant portions of the existing structure and multiple uses serves to promote the spirit and intent of the Ordinance. The removal of the residences, office area, storage and extension to tavern, would dramatically reduce the severely non-conforming appurtenances to the existing building and would increase open space in a highly and unsafely congested area. As conditioned, the petitioner will enjoy a reasonable use of this property, while bringing it more into conformity with the standards of the Ordinance. To allow the residence to remain and be approved significantly in a severely non-conforming location would not be consistent with the spirit and intent of the Ordinance and does not justify the issuance of a variance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA02:129 ROBERT & BARBARA RUSSELL (March 19, 2003)

Mr. Bartholomew

I make a motion to adopt the staff's revised recommendation dated May 14, 2003, for approval of the revised request with the staff's conditions and for the staff's reasons, with the following modifications: Modify Condition No. 3 to include: An as-built survey must be submitted and approved by Waukesha County Department of Parks and Land Use upon completion of the deck.

Ms. Voelker added: The statement in the reasons by staff, regarding the existing patio already being impervious, should be removed.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The deck be located no closer to the lake and 100-year floodplain than the existing patio on the first level.
- 2.) The deck must be located at least 10 ft. from the north lot line, including any stairways.
- 3.) Prior to the issuance of a zoning permit, a new stake-out survey showing the location of all existing structures and their appurtenances, including the location of the deck and its appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the revised recommendation, as stated in the Staff Report, are as follows:

The revised proposal, with the above conditions, would meet the criteria necessary for granting of a special exception. The proposal would not further negatively impact the natural resources in the area since the proposal would only slightly increase impervious surfaces, where not otherwise permitted without the requirement of the Waukesha County Board of Adjustment approval. A majority of the area of the deck requiring a special exception from the Waukesha County Board of Adjustment is

directly above an existing patio, which is already impervious. In addition, as the aesthetics in the area may be impacted to some degree with the addition of a large deck, the proposal complies with the uses in the surrounding area. There are several decks nearby, which are located extremely close to the shoreline and 100-year floodplain of Lower Nashotah Lake. Since the deck is not encroaching on the shoreline and 100-year floodplain any further than the existing structures on the property and the proposal is similar to structures on neighboring properties, our Department feels the proposal, with the above conditions, complies with the intent and purpose of the Ordinance.

BA03:014 DAVID K. DRAEGER (March 19, 2003)

Ms. Voelker

I make a motion to adopt the staff's recommendation for approval of this request, with the revised conditions and reasons stated in the Staff Report

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following revised conditions:

Condition No. 1 revised: A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the existing detached garage on the N ½ of Lot 5, shall not be further remodeled or repaired, except for non-structural ordinary maintenance, to extend the lifetime of the structure. Once the garage is removed from the property, it shall not be reconstructed, unless the proposal meets all Ordinance requirements. Prior to the issuance of a zoning permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.

Condition No. 3 revised: The deck must be located at least 72.7 ft. from the shoreline of North Lake.

The reasons for the revised recommendation, as stated in the Staff Report, are as follows:

The approval of the request to revise the above condition will allow the petitioner to construct the proposed deck to conform to the design of the existing structure. Requiring the petitioner to construct the deck 0.8 ft. further from the shoreline than the existing residence would not improve the natural resources in the area to any degree and the 0.8 ft. encroachment to the shore will not negatively impact the surrounding area, or natural resources in the area, but will increase the desirability of the structure, by allowing the deck to be constructed in line with the existing residence. Allowing the detached garage to remain on the N ½ of Lot 5 without the benefit of a new variance, with the above condition, will not adversely impact the surrounding area. The structure has existed for years without complaint and, as conditioned, will not be further modified to extend its lifetime. To require the petitioner to remove the garage on the N1/2 of Lot 5 would not be practical, since the petitioner did improve the neighborhood by adding additional land to his property, which will not be used as an additional single-family residential lot, as it was used, before the petitioner purchased the property.

ADJOURNMENT:

Ms. Voelker

I move we adjourn this meeting at 10:35 p.m.

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment

